



Australian Government
The Treasury

Ministerial Submission

MS25-001473



FOR ACTION - Managed investment scheme failures

TO: Assistant Treasurer and Minister for Financial Services - The Hon Dr Daniel Mulino MP

CC: Treasurer - The Hon Jim Chalmers MP

TIMING

At your discretion.

Recommendation

s 47E(d)



Signature

Date: / /2025

KEY POINTS

s 47E(d)

- ASIC’s investigation indicates that both the Shield and First Guardian cases involve a business model in which potential investors are contacted by lead generators and referred to financial advisers for personal advice. Those financial advisers are alleged to have provided ‘cookie cutter’ advice recommending individuals roll their superannuation into an SMSF or superannuation wrap platform, and then make undiversified investments in related MISs, which have subsequently failed.
- ASIC has initiated enforcement action against various parties involved in the Shield and First Guardian cases and has taken a range of court actions to protect investor funds while its investigations were underway. However, notwithstanding these actions investors are likely to incur significant losses.
 - Approximately 5,800 consumers invested \$480 million in Shield. The current value of assets is estimated by liquidators to be around half that amount (between \$207-\$241 million in assets).
 - Approximately 6,000 consumers invested \$570 million in First Guardian. The statutory report to creditors by liquidators for First Guardian, released publicly on Wednesday 9 July 2025, indicates that only minimal assets remain.

s 47C, s 47E(d)

- The publication of the liquidator’s report for First Guardian, shows investor losses could potentially be as high as \$446m but they reiterate that their investigations are in their early stages and ongoing. This will likely also put a spotlight on potential future losses to be covered by the Compensation Scheme of Last Resort (CSLR) as well regulatory settings for MIS.
 - The Government will likely face calls to strengthen regulation to reduce investor risk and deter misconduct.

s 47C, s 47E(d)

s 47C

s 47C

s 47E(d)

s 47E(d)

s 47E(d)

- While the effectiveness of existing regulation, and ASIC's enforcement powers, to guard against these types of conduct failure will become clearer as the existing enforcement activity runs its course, s 47C, s 47E(d)

s 47C, s 47E(d)

- However, the MIS review did not consider the business models utilised in the Shield and First Guardian cases. s 47C, s 47E(d) wider policy issues warranting consideration, including:
 - the role of lead generators and the exemption from the anti-hawking provisions for financial advisers, which has facilitated financial products being recommended as part of personal advice to the client without breaching anti-hawking provisions;
 - whether superannuation trustees are adequately overseeing the products they offer on their platforms;
 - the role of research companies in assessing information to rate investment risk;
 - regulatory settings covering the establishment and use of self-managed superannuation funds (SMSF) – in particular, whether the ease-of-access to establishing an SMSF and transferring the entirety of one's superannuation into it feeds the risks contemplated in this submission (see Attachment A for further information); and
 - the adequacy of MIS investment rules and protections for retail investors, noting that both Shield and First Guardian were registered schemes offered to retail clients.

s 47C, s 47E(d)

- Should you wish to take further action in the near term, we recommend examining all of the drivers that appear to have led to retail investor losses in these cases, with a view to focusing on identifying the most effective policy responses.
 - This approach would allow you and the Government to develop a comprehensive response to the issues raised by this business model and related factors.

s 47C, s 47E(d)

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9 July 2025

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RISD

ATTACHMENTS

A: Background on MIS, previous reviews s 47C, s 47E(d)

ATTACHMENT A – BACKGROUND ON MIS, PREVIOUS REVIEWS AND THE MIS REVIEW FINDINGS

Background on Managed Investment Schemes (MIS)

- MIS are a type of collective investment vehicle enabling greater access to finance and investment opportunities through scale for ordinary investors. The total value of assets currently invested in MIS structures is around \$2.9 trillion and these play an important role in capital formation and risk diversification in the economy.
 - The statutory definition of a managed investment scheme is a broad test that captures a wide range of products. Examples include cash management trusts, property schemes, exchange traded funds, agricultural schemes, and time-sharing schemes.
 - Common features of MIS are that they pool resources, often have a common purpose, and investors have no day to day control, with the daily operations left to the Response Entity (RE).
 - The benefit of the current regulatory settings is that it has proven flexible and accommodative of changing trends and technologies in investing and financing. MIS structures could offer liquidity benefits with investors to the ability to buy or sell units in otherwise illiquid classes.
 - The MIS structure offers accessibility benefits also as investors can participate in markets or asset classes that might otherwise be inaccessible due to high capital requirements or complexity.
 - MIS are investments which are managed by professional fund managers allowing exposure to assets without personal involvement. MIS invest in different assets, including domestic assets, to generate returns for beneficiaries and the economy.
- MIS are predominately regulated by Chapter 5C of the Corporations Act 2001, which was first introduced into the law by the *Managed Investments Act 1998*, and remains largely unchanged in over 20 years. The key requirements for a MIS are:
 - an application with ASIC that details the RE, scheme constitution and compliance plan
 - if selling to the public with 20+ members it must be registered with ASIC.
 - : The RE of a registered scheme must be a public company that holds an AFSL.
 - : A registered MIS must provide retail investors with a PDS, scheme constitution and compliance plan as well as annual reports and financial statements.
 - : Retail investor protections include disclosure obligations, mandatory registration of schemes, conduct and advice standards, product design and distribution obligations, access to external dispute resolution, and ASIC’s product intervention powers.

Previous reviews of the MIS regulatory framework

- There have been a number of high profile MIS collapses in previous years leading to multiple reviews and inquiries. These have generally highlighted common causes of failure including misconduct, illiquidity, and excess leverage. s 47C, s 47E(d)

The Treasury MIS review

Process

- In the October 2022–23 Budget, the Australian Government announced that Treasury would undertake a review of the regulatory framework for managed investment schemes. The review was in part a response to the collapse of Sterling Group in 2019 but was also intended as a comprehensive review of MIS regulatory settings, informed by past reviews – a number of which had not been responded to by Government.
- The MIS review examined whether the regulatory framework is fit-for-purpose, identified gaps, and considered enhancements that could reduce undue risk for investors. The review did not consider the inclusion of MIS to the CSLR.
 - Treasury released a consultation paper in August 2023 and received 85 submissions, including 14 confidential submissions.
 - The review team met with over 50 stakeholder organisations and conducted over 65 stakeholder meetings including roundtable meetings.
- The findings from the MIS review were provided to Government in May 2024 (MS24-000583). The Government is yet to respond to the review and the findings have not been made public.

s 47C, s 47E(d)

Existing SMSF regulatory issues

- There are currently few barriers preventing people from quickly establishing an SMSF and little-to-no restrictions on the class of assets a trustee can invest in. This includes the products offered by the entities referred to in this brief.
 - Legislation does not specifically mandate SMSFs have a diversified asset allocation. It only requires a trustee to consider diversification, taking into account the members' risk profile and liquidity requirements.
- In addition to potential compensation claims made to the CSLR, failed SMSF investments ultimately create risk for Government revenue insofar as they erode retirement savings and increase aged pension cost pressures.
- The same ease-of-establishment used to sign people up to high-risk, illiquid, and/or poorly diversified investments is also exploited by scammers to steal retirement savings from SMSFs, or in schemes where a promoter induces a person to illegally access their super before retirement (where the person will generally face significant penalties after the fact).
 - This is in contrast to APRA-regulated funds (i.e. industry and retail superannuation funds), which have stricter controls on the release of savings.

- A typical SMSF scam involves convincing a person to “roll-over” their superannuation balance from an APRA-regulated fund into a newly established SMSF. The funds land in the SMSF’s bank account – often one controlled by the scammer – where they are stolen in a manner similar to other scams (e.g. sent offshore where there is little chance of the funds being reclaimed).

s 47C, s 47E(d)

Superannuation Platforms

- By getting on a superannuation platform, MIS products can gain access to capital from the superannuation balances of retail investors who utilise that platform. The existence of these products on superannuation platforms of large, recognised financial services firms may have given investors the impression that these products had a lower level of risk.
- Superannuation trustees are subject to requirements around the products that are included on their platforms. These requirements include:
 - the general trustee obligations (including to act in the best financial interests of members);
 - the general obligations on financial services licensees (including to operate efficiently, honestly and fairly);
 - specific investment governance duties; and
 - the obligation to regularly assess outcomes for members and identify opportunities for improving these outcomes.
- These obligations extend beyond merely putting products on their platforms just to facilitate choice of investment options. Regulators have already flagged in advice to you (AMS-2025-024) concerns with the actions of the superannuation trustees involved in First Guardian and whether they were meeting existing regulatory requirements.



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The Treasury



Ministerial Submission

MS25-002218

FOR ACTION - Managed Investment Scheme Failures - Further advice

TO: Assistant Treasurer and Minister for Financial Services - The Hon Dr Daniel Mulino MP

CC: Treasurer - The Hon Jim Chalmers MP

TIMING

At your discretion.

Recommendation

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Signature	Date: / /2025
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KEY POINTS

- As indicated in previous advice, Treasury has been exploring options to address the types of conduct that have contributed to investor losses arising from high risk superannuation switching schemes seen in the Shield and First Guardian cases (S/FG) (MS25-001473).
 - This ministerial submission sets out a suggested approach to responding to the issues raised by these cases that can be undertaken concurrently with ASIC enforcement and related processes such as scheme liquidation.

s 47C, s 47E(d)

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- Develop a proposals paper to expand ASIC's data collection of managed investment schemes. We will provide further briefing, including to seek policy authority to proceed to consultation.

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ATTACHMENTS

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B: Reform options identified by ASIC

- s 47C, s 47E(d) [REDACTED]
[REDACTED] While ASIC notes the MIS framework has had limited reform since its introduction in 1998, its principles-based, anti-avoidance regime applies to a wide array of investment arrangements and has enabled growth and innovation over this time.
 - Reforms to registered schemes (which hold nearly \$2 trillion in assets) will need to be supported with a strong evidence base to avoid broader unintended consequences.
- Treasury supports in principle enhanced data collection powers to enhance ASIC’s oversight of the system and afford it a clearer line of sight of entities or groups of entities at risk. The design of such powers could be explored as part of the proposed proposals paper.
 - Targeted enhancements to data collection could support supervision activities and provide insights into potential systemic risk associated with MIS and build an evidence base for other proposed reforms. It would also enable Australia to meet international regulatory framework recommendations and collect similar information to its peers.
 - However, there will be natural limits to the improvement in early detection/intervention from this data, driven by factors like reporting timeframes and lags in data processing, analysis and subsequent investigation. Industry has previously expressed concerns about providing ASIC with unrestrained data collection powers due to a likely increase in regulatory burden. Other agencies (RBA, APRA, ABS) also have interest in different types of data collection from MIS.

s 47C, s 47E(d)

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